

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2982 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 and 2 Yes. 3 to 5 No.

USMANBHAI DAUDBHAI MATIA

Versus

DIST JUDGE

Appearance:

MR LM CHHABLANI for Petitioners

MR PB BHATT,AGP, WITH MR SP HASURKAR for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/10/98

ORAL JUDGEMENT

Rule. Mr.P.B.Bhatt, learned Assistant Government Pleader waives service of the Rule on behalf of the respondents. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The four petitioners, who are working as Peons in different Courts in Sabarkantha district, have moved this Court for appropriate writ, order or direction directing the learned District Judge, Sabarkantha at Himatnagar to act according the Circular of the Gujarat High Court bearing No.B.1421/82 dated 10th December, 1982 in the matter of filling in posts of Bailiffs from the Cadre of Peons by promotion and for a direction that the petitioners be promoted to the post of Bailiff as per the said Circular. Reading the said Circular, it is clear that the said Circular gives guidelines for filling in posts of Bailiffs from the cadre of Peons by promotion. It has been provided that 75 percent of the posts of Bailiffs shall ordinarily be filled in by promotion from amongst persons in the cadre of peons including Havildars, Naiks, Watchmen and Jail Warders having put in not less than 3 years service and possessing requisite educational qualifications for being appointed on the posts of Bailiffs and are otherwise suitable for such post. Before the vacancies are filled in, the Selection Committee is required to prepare Select List for this purpose in February every year and enlist as many persons in the select list as it is necessary for filling up by promotion 75 per cent of the expected vacancies during the following year subject to the availability of persons duly qualified and fit for promotion. It is further provided that if the number of persons enlisted in the select list of promotees is not sufficient for filling up 75 per cent of the available vacancies during the year, the deficiency shall be made good by appointment from the select list of direct recruits. In substance, the promotions to the posts of Bailiffs are given by promotion and direct recruitment in the ratio of 75:25. Jujarsinh Anarsinh Rathod, Incharge Registrar, Sabarkantha District Court, has filed affidavit in reply wherein it has been pointed out that :

"5....I say that as per the position of present set up in the District court of Sabarkantha, it is not possible to give any promotion. There were four vacant posts of bailiffs. As per the subsequent development one bailiff who was appointed as driver is reverted to his original post of bailiff. One post of bailiff is required to be filled in on the basis of inter-district

transfer because that proposal is already under process and is on the verge of finalisation. Now out of the two remaining vacant posts, one post is required to be filled in by direct recruitment and one is required to be filled in by way of promotion from amongst the peons. It is respectfully submitted that one more application for inter-district one way transfer at Banaskantha is also pending before the Hon'ble High Court for consideration and if that is granted then there will be only one post vacant and that will go for direct recruitment. Under this set of circumstances, the petitioner's contention that there are four posts of bailiffs (in oral submission it is contended 5 posts) is not true and therefore the direction as prayed by the petitioner may not be granted and the petition may be dismissed."

Once the Circular has been issued by the High Court giving guidelines for filling in posts of bailiffs from the cadre of peons by promotion and the ratio of promotees and direct recruits is fixed, it is expected of the subordinate Courts to follow the said circular scrupulously .Whenever any request for inter-district transfer is made, the High Court on its administrative side always calls for the remarks of the District Judge or the Principal Judge, City Civil Court, as the case may be and on receipt of such remarks , the High Court on its administrative side passes appropriate orders. Since the High Court solely relies on the remarks of the District Judge or the Principal Judge, it becomes the responsibility of the concerned District Judge/Principal Judge to see that the High Court should be apprised of the proper remarks. It has come to our notice that whenever a request is made for inter-district transfer, the concerned Judge, who , with a view to get rid of an underisable peon (as the case may be) at once shows his willingness to relieve him and his counter part the other Judge prepares to accept him by sending remarks that there is a vacancy for the post in question. Now this thing should never happen. Let us take another case. Many a times persons get employment at the outside place. Once the job is secured he starts making applications for one way inter district transfer. Needless to state the request is for native place or nearer to it. After securing employment, on all sorts of grounds viz to look after aged parents, or school going children, or to look after agricultural work or placing the husband and wife, who are in service, together etc., inter-district transfer is sought for. The concerned employee could

have thought of all these eventualities at the time when he applied for the job. If such a request is entertained, we are in effect doing injustice to the employees who are already working and waiting for promotion. Sympathy cannot be at the cost of legal rights of others. It may, however, be clarified that there may be cases of extreme hardships which cannot be ignored. As and when such a situation arises the same can be considered by exercising proper discretion and by imposing appropriate conditions in accordance with law upon the employee seeking one way inter district transfer. Vacancy may be there, but it is to be filled in by promottee or direct recruit. Since we are accepting the request of the outsiders with a view to accommodate them, how are we going to promote the incumbents who are already waiting for their turn to come ? Thus request for inter district transfer cannot be accepted casually and in routine and under no case against the legitimate rights of the employees already working and waiting for promotion. In the instant case the learned District Judge has overlooked the circulars issued by the High Court giving guidelines and fixing ratio of promotees and direct recruits. As stated in the affidavit-in-reply, one post of bailiff is required to be filled in on the basis of inter-district transfer because that proposal is already under process and is on the verge of finalisation and similarly it is further stated that one more application for inter-district one way transfer at Banaskantha is also pending before the High Court for consideration and, if that is granted, then there will be only one post vacant and that will go to the direct recruit. Now if such recommendations are made, it would certainly be against the interest of the employees who are already working in the establishment and craving for promotion. Under the circumstances, the learned District Judge is directed to reconsider the case in light of the observations stated in this judgment and till the case of the petitioners is reconsidered , he will not finalise any application and shall pass any order on the application for one way inter district request .

In the result, this petition partly is allowed. The learned District Judge is directed to reconsider the case in light of the observations and by following circular of the High Court dated 10-12-1982 and till the case of the petitioners is reconsidered , he will not finalise any application and shall pass any order on the application for one way inter district request . Rule is made absolute to the aforesaid extent with no order as to costs.

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